
(2000) 10 AP CK 0019

In the Andhra Pradesh High Court

Case No : WA No's. 1689, 1690 and 1691 of 1998

District Collector, RR District and others

APPELLANT

Vs

Kadicherla Narsimha and others

RESPONDENT

Date of Decision : 20-10-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Laoni Rules, 1950 — Rule 21, 9

Citation : (2000) 6 ALD 502 : (2000) 6 ALT 279

Hon'ble Judges : N.Y. Hanumanthappa, J;A. Gopal Reddy, J

Bench : Division Bench

Advocate : Government Pleader for Revenue, for the Appellant; Mr. V. Venkata Ramana, for the Respondent

Judgement

A. Gopal Reddy, J.—All these appeals are filed against the common judgment of the learned single Judge dated 17-7-1998 made in WP Nos.35173, 35225 and 35496 of 1997.

2. The facts in nutshell for disposal of these appeals are as follows:

The petitioners in WP Nos.35173 and 35225 of 1997 claimed that they were assigned Ac.3-00 cents of dry land each in S. No.59 of Kondapur village, Serilingampalli Mandal, Ranga Reddy District (formerly Hyderabad District) by the Tahsildar in Proceedings No.A9/10897/61 dated 13-12-1961 under Rule 9(g) of Laoni Rules, 1950 and petitioners' father in WP No.35496 of 1997 was assigned Ac.4.21 guntas in S. Nos.2, 3, 18 and 217 of Kondapur village in Proceedings No.A9/10899 dated 13-12-1961. Ever since from the date of assignment they have been in possession and enjoyment of the said land by paying land revenue to the Government for the last 36 years and thus they are the lawful owners of the said land having participated in the auction and paid the bid amount towards the sale consideration. In spite of the said assignment long back, the authorities have not carried out mutation in their favour except showing their possession. They made several representations requesting the

respondents to grant mutation by issuing Supplementary Sethwar evidencing assignment in their favour. As there was no response from the official respondents, the petitioners earlier filed WP Nos.18605 of 1997 and 18527 of 1997 which were disposed of by this Court at the admission stage with a direction to the respondents to consider the request of the petitioners and pass appropriate order for mutation of their names in the revenue records. In pursuance of the said order the third respondent by the impugned Proceedings No.ROR/951/1997, ROR/969/1997 and ROR/ 912 of 1997 dated 9-12-1997 rejected the request for mutation of their names in the revenue records as pattadars and issue of Supplementary Sethwar. Aggrieved by the same, the petitioners filed the above writ petitions to set aside the rejection order and direct the respondents to mutate their names in respect of the land assigned in their favour in revenue records and issue Supplementary Sethwar and also direct the respondents not to interfere with the possession and enjoyment of the petitioners over the said land.

3. The respondents filed a counter opposing the petition stating that the petitioners are encroaches over the land for which Sivai Jamabandi was imposed, but no land revenue was collected as alleged. The alleged patta certificates dated 13-12-1961 are the temporary written permission issued to the petitioners wherein no land revenue has been fixed. The land is not assigned to the petitioners in "D" form under Assignment Rules existing in 1961 as per G.O. Ms, No.1406 dated 25-7-1958. As per the above Assignment Policy issued in the said GO said lands are not available for granting patta. The allegation of the petitioners that they were given paltas under Rule 9(g) of Laoni Rules, 1950 is baseless and highly doubtful and as per the provisions of the new policy Gairon lands prohibited from assignment . It is also stated in para 5 that in the certificates issued in favour of the petitioner, the signature of Tahsildar is shown as 21-12-1961 whereas the date of issue of certificates as 13-12-1961, as such the certificates are highly doubtful and not genuine and same is liable to be investigated further. It is stated by the respondents that WP Nos.18605 of 1997 and 18527 of 1997 were disposed of at the admission stage on 7-8-1997 and 8-8-1997 respectively with a direction to the respondents to consider the representations of the petitioners and dispose of the same. As per the above direction, notices were issued to the petitioners to produce the documentary evidence in support of their claim. Pursuant to the same, xerox copies of letters of temporary written permission for occupation of Government land were filed by the writ petitioners and the representations have been disposed of on 10-12-1997 after giving an opportunity to defend their case. The petitioners are claiming the ownership over the Government land basing on written permission said to have been issued cannot be treated as assignment under the Assignment Rules existing as on the date of granting such permission- The petitioners are not entitled for any pattadar rights over the said land and the petitioners never made any representation except filing the writ petitions in the year 1997 and procedure for assignment issued in G.O. Ms. No. 1406 dated 25-7-1958 has not been

followed, hence, they cannot derive any right as such in the properly. In the impugned order, it is mentioned that as per revenue records there were some encroachers including the petitioners from the year 1969-70 to 1987-88 for which Sivai Jamabandi i.e., penalty was imposed on them. The alleged permission to enter into Government land was temporary and petitioners are not in possession of the land at present, therefore, the question of their mutation in the revenue records as Pattadars and issue of Supplementary Sethwar does not arise, and the alleged file where temporary permits were granted is not traceable as informed by the Mandal Revenue Officer.

4. The learned single Judge after discussing the Laoni Rules, 1950 came to the conclusion that the petitioners were granted permission under Rule 9(g) to occupy the land and it cannot be said as mere permission to occupy the land temporarily. After following the procedure, permission under Rule 9(g) was granted and it is the duty of the Girdawar to fix temporary assessment and the said rate of assessment shall be in force till the Department of Land Records (Survey and Settlement) completes the sub-divisional survey and collects the akarband. Elaborate procedure is prescribed imposing a duty on the authorities to maintain number of Registers before a permission under Rule 9(g) was granted and it is for the authorities to produce them and landless poor and semi-illiterate persons as petitioners cannot be expected to produce any proof. Though it is contended on behalf of the Government that after coming into force of the new rules issued under G.O. Ms. No.1406 dated 25-7-1958 the same will govern the assignment of land, and once the Laoni rules are repealed, the old rules will not have any force, therefore such a permission granted under Rule 9(g) is invalid, the said contention was repelled by the learned single Judge stating even after repealing of the Laoni rules, the old rules continue to operate. Under the Laoni Rules, the market value is collected for the land assigned through public auction but under the new rules, the land assigned shall be free of market value and it shall be heritable but not alienable, therefore both the rules are operate simultaneously, for different situations alongside with the rules framed under G.O. Ms. No.1406. By arguing so, the Government never raised its little finger and have not taken any steps to cancel the said proceedings and continued the petitioners since more than 36 years. It will be too late to say that the proceedings are invalid and allowed the writ petitions directing the respondents to mutate the names of the petitioners as pattadars and issue Supplementary Sethwar as early as possible, but with regard to the second prayer not to interfere with the possession and enjoyment of the petitioner, the learned single Judge has not issued any direction. Aggrieved by the same, the present appeals are filed by the State.

5. During the pendency of these appeals, the appellants filed WAMP No.3132 of 1999 seeking leave to receive the additional affidavit stating that the original permissions granted by the then Tahsildar were not filed before the Mandal Revenue Officer, Serlingampalli during enquiry and only xerox copies of the same were filed. It is further stated that there are variations in the written permissions

produced and office seal and signature of the Tahsildar and others are placed in the same place with equal distance on each of the said document which appears practically impossible and improbable and the said xerox copies seems to be electronic piracy, as such it is beyond doubt that the said temporary written permissions are forged documents, which requires examination by Analyst to prove their genuineness. Apart from the same, they have also tried to file several documents to prove that the signature of the then Tahsildar, Hyderabad West is not genuine etc.

6. Sri D. Prakash Reddy, learned Additional Advocate-General appearing for the State in all these appeals strenuously contended that even according to the petitioners, they were granted permission in 1961 and till 1969-70 their names were not shown in revenue records and only from 1969-70 to 1987-88 their possession was recorded for which Sivai Jamabadi was levied. If really the petitioners are assigned the lands in 1961, the petitioners could have made a representation for revising Sivai Jamabandi but without any protest they have paid the same which itself shows that their possession over the suit schedule property for the relevant period is unauthorised occupation and since from 1988-89 the possession is with the Government, therefore, no land revenue was levied. A bare perusal of the xerox copies of the permission granted in the year 1961 clearly shows that the same are manipulated documents with the electronic piracy and they cannot derive any right out of the same. Since from 1961 to 1997 the petitioners kept silent and not made any efforts to get their names mutated in the revenue records and for the first time they filed writ petitions in the year 1997. In view of the same no mandamus can be given by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India to confer title on the respondents. Once the Laoni Rules are superseded under new rules issued in G.O. Ms. No.1406 Land Permission Certificates issued under Rule 9(g) are invalid and the same is without jurisdiction. The learned single Judge erred in holding that both the rules can operate for the same. Once there is a cloud about the documents, it is not for the High Court to give a finding that same are genuine and they are entitled to pattadar rights, against the rejection of the application for mutation u/s 4, the petitioners have a right of appeal u/s 5(5). Rules 21 also specifies the authorities to whom appeal lies. All these are conflicted questions of facts which can be decided only by the appellate authority or by the civil Court but Court in exercise of the writ jurisdiction cannot give a finding where conflicting questions of facts are involved.

7. On the other hand, Sri K. Prathap Reddy, learned senior Counsel supported the order stating that merely levying Sivai Jamabandi cannot be treated as unauthorised occupation, Sivai Jamabandi will be levied only to the unassessed land i.e., possession without title to the lands. Admittedly, the petitioners, who are in possession of the property till 1987-88. He also contended that even if the assignment order is irregular the possession becomes adverse the moment grantee in possession of the property. The writ petitioners perfected their title by adverse possession unless they are evicted by the authorities, and it cannot be

said that the petitioners are not in possession of the property and they are entitled to continue in possession and it is not open for the Government to take possession without following due process of law. u/s 4 of the ROR Act, they are entitled to get their names mutated in the revenue records and the learned single Judge rightly directed the respondents to mutate the names of the petitioners in the revenue records, which does not warrant any interference.

8. To appreciate the rival contentions, we have called for the original records. Admittedly, though the permission is granted in the year 1961, the petitioner's name was not recorded in the revenue records till 1969-90. Upto 1967 in column No.32 of the Pahani it is mentioned as Government Sarkari and the land is fallow, no cultivation. For the first time during the year 1969-70 in column No.32 only two names were shown in possession column and all the 13 petitioners names were not found. In 1972-73 only nine people were shown in possession of 18 acres, the remaining land is fallow and the same continued upto 1988-89. The learned Additional Advocate-General is right in his submission that though the Mandal Revenue Officer gave a finding that the petitioners are not in possession of the property after 1988-89, the said finding has not been specifically challenged by the petitioners in the writ petitions nor any finding is recorded to the said effect by the learned single Judge.

9. It is contended on behalf of the Government that the basis of the claim of the writ petitioners is that the certificates issued by the then Tahsildar appears to be not genuine, and require to be sent to an expert to prove their genuineness. It is also contended by the Government that some portion of the land out of the disputed land has been assigned to the third parties and the correctness or otherwise of the said assignment cannot be disputed by the writ petitioners. We are not called upon to give any finding on such assignment as the same is not the issue involved in these proceedings. However, it is open to the writ petitioners to challenge the same before an appropriate forum, if so advised. The Counsel for the respondents-writ petitioners contended that since from the date of assignment they are in possession of the property uninterruptedly but the revenue records show first time their possession was recorded in the year 1969-70. To substantiate that they are in possession of the property, from 1961 onwards no revenue records were produced by the writ petitioners, nor any land revenue receipts are filed, moreover this is a disputed question of fact. There are allegations and counter allegations with regard to the genuineness of the certificates issued by the then Tahsildar and also the possession of the property till 1989. It is not shown as to how the Government took possession of the property. Also not shown whether any proceedings were initiated to evict the respondents-writ petitioners or the writ petitioners voluntarily abandoned possession and as such no Sivai Jambandi was levied nor any land revenue is collected from the petitioners. It is well settled that the writ petition can be maintained only where if the facts pleaded are of such a nature which do not involve complicated questions of fact and the High Court can proceed with the same under Article 226 of the Constitution. The object of Article 226 of the

Constitution of India is for enforcement and not for establishment of right or title to the immovable property. In view of the complicated questions of facts and law, assertions and denial, we deem it appropriate that invoking of writ jurisdiction and declaring that the writ petitioners are entitled to mutate their names as pattadars is inappropriate. Against the orders passed by the Mandal Revenue Officer refusing to mutate their names in the revenue records under A.P. Rights in Land and Patta Passbook Act, 1971, appeal lies to the Revenue Divisional Officer under subsection (5) of Section 5 and further revision lies to the Collector. Apart from the same, under sub-section (2) of Section 8 if any person aggrieved as to any right for which he is in possession by an entry made in any record of right, he may institute a suit against the person denying or interested to deny his title to such right and for declaration of his rights under Chapter VI of Specific Relief Act, 1963 and the entry in the record of rights shall be amended in accordance with any such declaration. In view of the alternative remedy available to the writ petitioners and since the disputed questions of fact and law involved which require to be proved by adducing evidence we deem it proper to allow the writ appeals by setting aside the common order of the learned single Judge and direct the parties to work out their remedies before the appropriate forum in accordance with law. It is made clear that challenging the order passed by the Mandal Revenue Officer, if the writ petitioners file an appeal within three months from today it is ordered that the appellate authority shall entertain the same. Regarding possession both sides assert that they are in possession of the property. The Government further asserts that the entire property has been assigned to the third parties. In view of the same, status quo existing as on today as to possession and granting alienation shall be continued till the disposal of such appeal. If the writ petitioners have not taken any steps during the said period by filing appeal before any authority or Forum or any other remedy available to them, it is open for the Government to proceed with the property as it deems fit. All the questions, which are raised by the writ petitioners as well as the appellants are kept open and the same can be agitated before the competent authority or any other forum available under law. The parties are at liberty to file additional evidence before the appellate authority or forum, which they now sought to produce or the evidence already produced before the Mandal Revenue Officer to establish their respective rights.

10. With the above observations all the writ appeals are accordingly allowed. No costs.